

Calendar No. 314

105TH CONGRESS
2D Session
S. 1244

A BILL

To amend title 11, United States Code, to protect certain charitable contributions, and for other purposes.

FEBRUARY 26, 1998
Reported with an amendment

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To amend title 11, United States Code, to protect certain charitable contributions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 1997

Mr. GRASSLEY (for himself, Mr. SESSIONS, Mr. GRAMS, Mr. ALLARD, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

FEBRUARY 26, 1998

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 11, United States Code, to protect certain charitable contributions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Religious Liberty and
5 Charitable Donation Protection Act of 1997”.

1 **SEC. 2. DEFINITIONS.**

2 Section 548(d) of title 11, United States Code, is
3 amended by adding at the end the following:

4 “(3) In this section, the term ‘charitable contribution’
5 means a charitable contribution, as that term is defined
6 in section 170(e) of the Internal Revenue Code of 1986,
7 if that contribution—

8 “(A) is made by a natural person; and

9 “(B) consists of—

10 “(i) a financial instrument (as that term is
11 defined in section 731(e)(2)(C) of the Internal
12 Revenue Code of 1986); or

13 “(ii) cash.

14 “(4) In this section, the term ‘qualified religious or
15 charitable entity or organization’ means—

16 “(A) an entity described in section 170(e)(1) of
17 the Internal Revenue Code of 1986; or

18 “(B) an entity or organization described in sec-
19 tion 170(e)(2) of the Internal Revenue Code of
20 1986.”.

21 **SEC. 3. TREATMENT OF PRE-PETITION QUALIFIED CHARI-**
22 **TABLE CONTRIBUTIONS.**

23 (a) IN GENERAL.—Section 548(a) of title 11, United
24 States Code, is amended—

25 (1) by inserting “(1)” after “(a)”;

1 (2) by striking “(1) made” and inserting “(A)
2 made”;

3 (3) by striking “(2)(A)” and inserting “(B)(i);

4 (4) by striking “(B)(i)” and inserting “(ii)(I);

5 (5) by striking “(ii) was” and inserting “(II)
6 was”;

7 (6) by striking “(iii)” and inserting “(III);

8 and

9 (7) by adding at the end the following:

10 “~~(2)~~ A transfer of a charitable contribution to a
11 qualified religious or charitable entity or organization shall
12 not be considered to be a transfer covered under para-
13 graph ~~(1)(B)~~ in any case in which—

14 “~~(A)~~ the amount of that contribution does not
15 exceed 15 percent of the gross annual income of the
16 debtor for the year in which the transfer of the con-
17 tribution is made; or

18 “~~(B)~~ the contribution made by a debtor exceed-
19 ed the percentage amount of gross annual income
20 specified in subparagraph ~~(A)~~, if the transfer was
21 consistent with the practices of the debtor in making
22 charitable contributions.”

23 (b) TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR
24 TO CERTAIN CREDITORS AND PURCHASERS.—Section
25 544(b) of title 11, United States Code, is amended—

1 (1) by striking “(b) The trustee” and inserting
 2 “(b)(1) Except as provided in paragraph (2), the
 3 trustee”; and

4 (2) by adding at the end the following:

5 “(2) Paragraph (1) shall not apply to a transfer of
 6 a charitable contribution (as that term is defined in sec-
 7 tion 548(d)(3)) that is not covered under section
 8 548(a)(1)(B), by reason of section 548(a)(2).”.

9 (c) CONFORMING AMENDMENTS.—Section 546 of
 10 title 11, United States Code, is amended—

11 (1) in subsection (e)—

12 (A) by striking “548(a)(2)” and inserting
 13 “548(a)(1)(B)”; and

14 (B) by striking “548(a)(1)” and inserting
 15 “548(a)(1)(A)”; and

16 (2) in subsection (f)—

17 (A) by striking “548(a)(2)” and inserting
 18 “548(a)(1)(B)”; and

19 (B) by striking “548(a)(1)” and inserting
 20 “548(a)(1)(A)”; and

21 (3) in subsection (g)—

22 (A) by striking “section 548(a)(1)” each
 23 place it appears and inserting “section
 24 548(a)(1)(A)”; and

1 (B) by striking “548(a)(2)” and inserting
 2 “548(a)(1)(B)”.

3 **SEC. 4. TREATMENT OF POST-PETITION CHARITABLE CON-**
 4 **TRIBUTIONS.**

5 (a) CONFIRMATION OF PLAN.—Section
 6 1325(b)(2)(A) of title 11, United States Code, is amended
 7 by inserting before the semicolon the following: “, includ-
 8 ing charitable contributions (that meet the definition of
 9 ‘charitable contribution’ under section 548(d)(3)) to a
 10 qualified religious or charitable entity or organization (as
 11 that term is defined in section 548(d)(4)) in an amount
 12 not to exceed 15 percent of the gross income of the debtor
 13 for the year in which the contributions are made”.

14 (b) DISMISSAL.—Section 707(b) of title 11, United
 15 States Code, is amended by adding at the end the follow-
 16 ing: “In making a determination whether to dismiss a case
 17 under this section, the court may not take into consider-
 18 ation whether a debtor has made, or continues to make,
 19 charitable contributions (that meet the definition of ‘chari-
 20 table contribution’ under section 548(d)(3)) to any quali-
 21 fied religious or charitable entity or organization (as that
 22 term is defined in section 548(d)(4)).”.

23 **SEC. 5. APPLICABILITY.**

24 This Act and the amendments made by this Act shall
 25 apply to any case brought under an applicable provision

1 of title 11, United States Code, that is pending or com-
 2 menced on or after the date of enactment of this Act.

3 **SEC. 6. RULE OF CONSTRUCTION.**

4 Nothing in the amendments made by this Act is in-
 5 tended to limit the applicability of the Religious Freedom
 6 Restoration Act of 1993 (42 U.S.C. 2002bb et seq.).

7 **SECTION 1. SHORT TITLE.**

8 *This Act may be cited as the “Religious Liberty and*
 9 *Charitable Donation Protection Act of 1998”.*

10 **SEC. 2. DEFINITIONS.**

11 *Section 548(d) of title 11, United States Code, is*
 12 *amended by adding at the end the following:*

13 *“(3) In this section, the term ‘charitable contribution’*
 14 *means a charitable contribution, as that term is defined in*
 15 *section 170(c) of the Internal Revenue Code of 1986, if that*
 16 *contribution—*

17 *“(A) is made by a natural person; and*

18 *“(B) consists of—*

19 *“(i) a financial instrument (as that term is*
 20 *defined in section 731(c)(2)(C) of the Internal*
 21 *Revenue Code of 1986); or*

22 *“(ii) cash.*

23 *“(4) In this section, the term ‘qualified religious or*
 24 *charitable entity or organization’ means—*

1 “(A) an entity described in section 170(c)(1) of
2 the Internal Revenue Code of 1986; or

3 “(B) an entity or organization described in sec-
4 tion 170(c)(2) of the Internal Revenue Code of 1986.”.

5 **SEC. 3. TREATMENT OF PRE-PETITION QUALIFIED CHARI-**
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8 States Code, is amended—

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10 (2) by striking “(1) made” and inserting “(A)
11 made”;

12 (3) by striking “(2)(A)” and inserting “(B)(i);

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14 (5) by striking “(ii) was” and inserting “(II)
15 was”;

16 (6) by striking “(iii)” and inserting “(III)”;

17 (7) by adding at the end the following:

18 “(2) A transfer of a charitable contribution to a quali-
19 fied religious or charitable entity or organization shall not
20 be considered to be a transfer covered under paragraph
21 (1)(B) in any case in which—

22 “(A) the amount of that contribution does not ex-
23 ceed 15 percent of the gross annual income of the
24 debtor for the year in which the transfer of the con-
25 tribution is made; or

1 “(B) the contribution made by a debtor exceeded
 2 the percentage amount of gross annual income speci-
 3 fied in subparagraph (A), if the transfer was consist-
 4 ent with the practices of the debtor in making chari-
 5 table contributions.”.

6 (b) *TRUSTEE AS LIEN CREDITOR AND AS SUCCESSOR*
 7 *TO CERTAIN CREDITORS AND PURCHASERS.*—Section
 8 544(b) of title 11, United States Code, is amended—

9 (1) by striking “(b) The trustee” and inserting
 10 “(b)(1) Except as provided in paragraph (2), the
 11 trustee”; and

12 (2) by adding at the end the following:

13 “(2) Paragraph (1) shall not apply to a transfer of
 14 a charitable contribution (as that term is defined in section
 15 548(d)(3)) that is not covered under section 548(a)(1)(B),
 16 by reason of section 548(a)(2). Any claim by any person
 17 to recover a transferred contribution described in the pre-
 18 ceding sentence under Federal or State law in a Federal
 19 or State court shall be preempted by the commencement of
 20 the case.”.

21 (c) *CONFORMING AMENDMENTS.*—Section 546 of title
 22 11, United States Code, is amended—

23 (1) in subsection (e)—

24 (A) by striking “548(a)(2)” and inserting
 25 “548(a)(1)(B)”; and

1 (B) by striking “548(a)(1)” and inserting
2 “548(a)(1)(A)”;
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4 (A) by striking “548(a)(2)” and inserting
5 “548(a)(1)(B)”;
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7 “548(a)(1)(A)”;
8 (3) in subsection (g)—
9 (A) by striking “section 548(a)(1)” each
10 place it appears and inserting “section
11 548(a)(1)(A)”;
12 (B) by striking “548(a)(2)” and inserting
13 “548(a)(1)(B)”.

14 **SEC. 4. TREATMENT OF POST-PETITION CHARITABLE CON-**
15 **TRIBUTIONS.**

16 (a) *CONFIRMATION OF PLAN.*—Section 1325(b)(2)(A)
17 of title 11, United States Code, is amended by inserting
18 before the semicolon the following: “, including charitable
19 contributions (that meet the definition of ‘charitable con-
20 tribution’ under section 548(d)(3)) to a qualified religious
21 or charitable entity or organization (as that term is defined
22 in section 548(d)(4)) in an amount not to exceed 15 percent
23 of the gross income of the debtor for the year in which the
24 contributions are made”.

1 (b) *DISMISSAL.*—Section 707(b) of title 11, United
 2 States Code, is amended by adding at the end the following:
 3 “In making a determination whether to dismiss a case
 4 under this section, the court may not take into consider-
 5 ation whether a debtor has made, or continues to make,
 6 charitable contributions (that meet the definition of ‘chari-
 7 table contribution’ under section 548(d)(3)) to any qualified
 8 religious or charitable entity or organization (as that term
 9 is defined in section 548(d)(4)).”.

10 **SEC. 5. APPLICABILITY.**

11 This Act and the amendments made by this Act shall
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